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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

MICHAEL J. BUSHMAN, : Civil No: 1:CV-00-1230
Petitioner, :
v. : (Judge Kane)
JAKE MENDEZ, : (Magistrate Judge Smyser)
Respondent. :
HARRISBURG, PA
NOV 13 2000
MARY E. D'ANDREA, CLERK
Reply Clerk

PETITIONER'S REPLY TO RESPONDENT'S BRIEF
OPPOSING PETITIONER'S OBJECTIONS TO THE
MAGISTRATE JUDGE'S REPORT

NOW COMES, the Petitioner, Michael J. Bushman, and appearing pro se, hereby files this his Reply to Respondent's Brief Opposing Petitioner's Objections to the Magistrate Judge's Report, and as grounds for not adopting the Magistrate's Report, the Petitioner presents as follows:

The magistrate Judge's Report and the Government's pleadings do not set forth a correct statement of law and facts. Petitioner relies on the Third Circuit's holdings in Marshal v. Lansing, 839 F.2d 933, 943 (3d Cir. 1988); Farese v. Luther, 953 F.2d 49 (3d Cir. 1992) and Gambino v. Morris, 134 F.3d 156 (3d Cir. 1998). Petitioner's case is practically indistinguishable to these precedent cases a fact that the Respondent and the Magistrate Judge seem to fail to address or contravene.

The Respondent's reliance on the PSI is erroneous considering this Circuit's precedence in Marshal, Farese, and Gambino. First, the respondent's reliance on one statement in the PSI

violates the Commission's rules and regulations. Second, it is arbitrary and erroneous considering the amount of evidence utilized to contravene this one sentence, and third, it violates the principles set forth by the Third Circuit in the above mentioned cases. It is a fundamental principle that federal courts will require evidence used to enhance an inmate's offense severity rating be more reliable than a bald assertion. Gambino, 134 F.3d at 162-63.

18 U.S.C. § 4206(c) requires that the Commission establish good cause for denying release on parole under the appropriate guidelines, and the Commission must have a substantial reason, backed by reliable evidence, and said decision must be in good faith on on factors which are not arbitrary, irrational, unreasonable, irrelevant, or capricious. Gambino, 134 F.3d at 162-63.

These are factors which are solely missing here. Petitioner well established, with facts which were not contravened by the Respondent, that he could not reasonably be held accountable for more than 14 pounds of cocaine. See Memorandum Brief, Traverse, and Objections to Magistrate Judge's Report.

Additionally, as pointed out in the pleadings previously filed, the Commission did not follow their own regulations in determining the offense severity rating.

Therefore, the Respondent's Brief in Opposition is without merit and should be disregarded.

The Respondent also states that Petitioner is not entitled to the same release date as codefendants. However, that is not the point. There exists a vast disparity in this case between co-defendants, and this point was made as it violates the Commission's rules and regulations. See Memorandum Brief, Traverse and Objections. As Petitioner pointed out, it is not the matter that codefendants with vast criminal records were paroled prior to him, it is a matter of the Commission following its own rules and regulations.

Finally, the government's reliance on the fact that Petitioner offered no new legal arguments or otherwise demonstrated any error, is disingenuous. Petitioner has consistently set forth a correct statement of fact and law predicated upon Third Circuit precedence, and has consistently attempted to have the record reflect these issues.

WHEREFORE, facts and premises considered, the Petitioner prays that this Court will not adopt the Magistrate Judge's Report and will grant the Petition for Writ of Habeas Corpus as originally moved for.

Dated: November 8, 2000

Respectfully submitted:



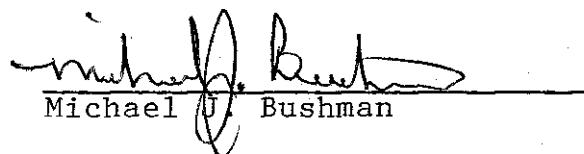
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CERTIFICATE OF SERVICE BY MAIL

I do hereby certify that on November __, 2000, I served a copy of the attached pleading by placing said copy in a prepaid envelope, addressed to the person hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in an official depository for the deposit of legal mail, located at USP Allenwood, for delivery by the United States Postal Service.

Addressee:

Kate L. Mershimer
Assistant U.S. Attorney
316 Federal Building
240 West Third Street
Williamsport, PA. 17703


Michael J. Bushman